

HOUSE BILL No. 1075

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-7.

Synopsis: Small short term consumer loans. Regulates certain small, short term loans under the Uniform Consumer Credit Code.

Effective: Upon passage.

Mahern, Smith M, Kuzman

January 8, 2002, read first time and referred to Committee on Financial Institutions.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1075

A BILL FOR AN ACT to amend the Indiana Code concerning consumer credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.5-7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 7. Small Loans**

5 **Sec. 101. This chapter shall be known and may be cited as**
6 **Uniform Consumer Credit Code — Small Loans.**

7 **Sec. 102. (1) Except as otherwise provided, all provisions of this**
8 **article applying to consumer loans apply to small loans, as defined**
9 **in this chapter.**

10 **(2) This chapter applies to:**

11 **(a) all persons licensed to make loans under this article or to**
12 **any person who facilitates, enables, or acts as a conduit for**
13 **any lender who is or may be exempt from licensing under**
14 **IC 24-4.5-3-502;**

15 **(b) a bank, savings association, credit union, or other state or**
16 **federally regulated financial institution except those that are**
17 **specifically exempt regarding limitations on interest rates and**



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fees; or

(c) a person, if the department determines that a transaction is:

(i) in substance a disguised loan; or

(ii) the application of subterfuge for the purpose of avoiding this chapter.

Sec. 103. The following definitions apply to this chapter:

"Small loan" Section 7-104

"Principal" Section 7-105

"Check" Section 7-106

"Renewal" Section 7-107

"Consecutive small loan" Section 7-108

"Paid in full" Section 7-109

"Monthly net income" Section 7-110

Sec. 104. "Small loan" means a loan:

(a) with a principal loan amount that is more than fifty dollars (\$50) and less than four hundred one dollars (\$401); and

(b) in which the lender holds the borrower's check under an agreement, either express or implied, for a specific period before the lender:

(i) offers the check for deposit or presentment; or

(ii) seeks authorization to transfer or withdraw funds from the borrower's account.

Sec. 105. "Principal" means the total of:

(a) the net amount paid to, receivable by, or paid or payable from the account of the consumer; and

(b) to the extent that the payment is deferred, the additional charges permitted by this chapter that are not included in subdivision (a).

Sec. 106. For purposes of this chapter, "check" has the meaning set forth in IC 26-1-3.1-104.

Sec. 107. "Renewal" refers to a small loan that takes the place of an existing small loan by:

(a) renewing;

(b) repaying;

(c) refinancing; or

(d) consolidating;

a small loan with the proceeds of another small loan made to the same consumer by a lender.

Sec. 108. "Consecutive small loan" means a new small loan agreement that the lender enters with the same consumer not later than seven (7) calendar days after a previous small loan made to

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that customer is paid in full.

Sec. 109. "Paid in full" means the termination of a small loan through the payment of the consumer's check by the drawee bank or authorized electronic transfer, the return of a check to a consumer who redeems it for consideration, or any other method of termination.

Sec. 110. "Monthly net income" means the income received by the consumer in the four (4) week period preceding the consumer's application for a small loan under this chapter and exclusive of any income other than regular net pay received, or as otherwise determined by the department.

Sec. 201. (1) Finance charges on the first one hundred dollars (\$100) of a small loan are limited to fifteen percent (15%) of the principal.

(2) Finance charges on the amount of a small loan greater than one hundred dollars (\$100) are limited to ten percent (10%) of the amount over one hundred dollars (\$100).

(3) The total amount of finance charges may not exceed thirty-five dollars (\$35).

Sec. 202. (1) Notwithstanding any other law, only the following fees may be contracted for and received by the lender on a small loan or subsequent refinancing:

(a) The parties may contract for a delinquency charge of not more than five dollars (\$5) on any installment not paid in full within ten (10) days after its scheduled due date.

(b) A delinquency charge under this section may be collected only once on an installment, however long it remains in default. A delinquency charge may be collected any time after it accrues.

(2) An additional charge may be made not to exceed twenty dollars (\$20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the consumer. This additional charge may be assessed one (1) time regardless of how many times a check may be submitted by the lender and dishonored.

Sec. 301. (1) For purposes of this section, the lender shall disclose to the consumer to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan

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documents the following statement:

"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. Renewing the small loan rather than paying the debt in full will require additional finance charges. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.

A consumer may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a consumer must inform the lender that the consumer wants to rescind the small loan, and the consumer must return the cash amount of the principal of the small loan to the lender."

(3) The statement required in subsection (2) must be in:

- (a) 14 point bold face type in the loan documents; and**
- (b) not less than one (1) inch bold print in the lending area of the business location.**

Sec. 401. (1) Except as provided in subsection (2), a small loan may not be made for a term of less than fourteen (14) days.

(2) After the consumer's third consecutive small loan renewal, another small loan may not be made to that consumer within seven (7) days after the date of the third consecutive small loan unless the new small loan is for a term of twenty-eight (28) days or longer.

Sec. 402. (1) A lender is prohibited from making a small loan to a consumer if the total payable amount of the small loan exceeds twenty percent (20%) of the consumer's monthly net income.

(2) A small loan may be secured by only one (1) check or electronic debit per small loan. The check or electronic debit may not exceed the amount advanced to or on behalf of the consumer plus loan finance charges contracted for and permitted.

(3) A consumer may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan. After each payment is made on a small loan, whether the payment is in part or in full, the lender shall give a signed and dated receipt to the consumer making a payment showing the amount paid and the balance due on the small loan.

(4) The lender shall provide to each consumer a copy of the required loan documents before the disbursement of the loan proceeds.

(5) A consumer may rescind a small loan without cost not later

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than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a consumer must:

- (a) inform the lender that the consumer wants to rescind the small loan; and
- (b) return the cash amount of the principal of the small loan to the lender.

Sec. 403. A small loan may not be secured by personal property other than a check or electronic debit.

Sec. 404. (1) With respect to a small loan or subsequent refinancing, no lender may permit a person to become obligated under more than one (1) loan agreement with the lender at any time.

(2) A lender shall not make a small loan or subsequent refinancing that, when combined with another outstanding small loan owed to another lender, exceeds a total of four hundred dollars (\$400) when the face amounts of the checks written in connection with each loan are combined into a single sum. A lender shall not make a small loan to a consumer who has two (2) or more small loans outstanding, regardless of the total value of the small loans.

(3) A lender complies with subsection (2) if the consumer represents in writing that the consumer does not have any outstanding small loans with the lender or with any other lender and the lender independently verifies the accuracy of the consumer's written representation through commercially reasonable means. A lender's method of verifying whether a consumer has any outstanding small loans will be considered commercially reasonable if the method includes a manual investigation or an electronic query of:

- (a) the lender's own records, including both records maintained at the location where the consumer is applying for the transaction and records maintained at other locations within the state that are owned and operated by the lender; and
- (b) available department approved databases.

(4) The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113).

Sec. 405. (1) This section does not apply to a business that is

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1 licensed by the department for a purpose other than consumer
2 loans.

3 (2) A lender shall not conduct the business of making small
4 loans under this chapter within an office, suite, room, or place of
5 business where another business is solicited or engaged unless the
6 lender obtains a written opinion from the director of the
7 department that the other business would not be contrary to the
8 best interests of consumers.

9 Sec. 406. An agreement with respect to a small loan may not
10 provide for charges as a result of default by the consumer other
11 than those authorized by this chapter. A provision in violation of
12 this section is unenforceable.

13 Sec. 407. (1) A renewal or a refinancing of a small loan requires:

- 14 (a) a new contractual agreement;
- 15 (b) a new check as security; and
- 16 (c) new disclosures under IC 24-4.5-7-301.

17 (2) If a consumer pays off the small loan in cash or its
18 equivalent, the check that was held as security must be returned to
19 the consumer.

20 Sec. 408. (1) A lender may permit a consumer to renew a small
21 loan without a reduction in principal one (1) time.

22 (2) After the initial renewal permitted in subsection (1), the
23 lender may renew a small loan with a twenty-five percent (25%)
24 reduction in the renewed principal amount up to three (3) times.

25 (3) After the third renewal permitted under subsection (2) is
26 paid in full, the lender may not enter into another small loan with
27 the same consumer for thirty (30) days after the date the third
28 renewal is paid in full.

29 (4) If a balance is due on the small loan after the third renewal,
30 the balance that remains is converted to a simple interest consumer
31 loan payable in installments under IC 24-4.5-3.

32 (5) A lender may renew a small loan only if the lender has a
33 handwritten statement from the consumer, signed and dated by the
34 consumer, stating:

- 35 (a) that the consumer is unable to repay the current small
36 loan;
- 37 (b) a specific reason that arose after the date of the
38 origination or renewal of the current small loan that makes
39 the consumer unable to repay the small loan; and
- 40 (c) that the consumer will be able to repay the small loan at
41 the new maturity date.

42 The lender is not required to determine the adequacy of the

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request or the specific reason stated. Preprinted forms are prohibited for the purpose of complying with this section. The department shall notify each lender in writing of the standards necessary to comply with this subsection.

Sec. 409. (1) This section applies to licensees and unlicensed persons.

(2) IC 26-1-3.1-502.5, IC 26-2-7, IC 34-4-30 (before its repeal), IC 34-24-3, and IC 35-43-5 apply to small loans only when a check is used to defraud another person. IC 24-4.5-3-404 does not apply to a small loan.

(3) A contractual agreement in a small loan transaction must include the language of subsection (2) in 14 point bold type.

(4) A person who violates this chapter:

(a) is subject to a civil penalty up to one thousand dollars (\$1,000) imposed by the department;

(b) is subject to the remedies provided in IC 24-4.5-5-202;

(c) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5;

(d) has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and

(e) is liable to the consumer for actual damages, statutory damages of one thousand dollars (\$1,000) per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.

(5) The department may sue:

(a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and

(b) for other equitable relief.

(6) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a consumer. A consumer is not required to exhaust any administrative remedies under this section or any other applicable law.

Sec. 410. A lender making small loans shall not commit nor cause to be committed any of the following acts:

(a) Threatening to use or using the criminal process in any state to collect on a small loan.

(b) Threatening to take action against a consumer that is prohibited by this chapter.

(c) Making a misleading or deceptive statement regarding a

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small loan or a consequence of taking a small loan.

(d) Contracting for and collecting attorney's fees on small loans made under this chapter.

(e) Altering the date or any other information on a check held as security.

(f) Using a device or agreement that would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:

(i) entering a different type of transaction with the consumer;

(ii) entering into a sales/leaseback arrangement;

(iii) catalog sales; or

(iv) entering any other transaction with the consumer that is designed to evade the applicability of this chapter.

(g) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan.

(h) Charging to cash a check representing the proceeds of a small loan.

(i) Except as otherwise provided in this chapter:

(i) accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or

(ii) renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender.

(j) Including any of the following provisions in a loan document:

(i) A hold harmless clause.

(ii) A confession of judgment clause.

(iii) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department.

(iv) An assignment of or order for payment of wages or other compensation for services.

(v) A provision in which the consumer agrees not to assert a claim or defense arising out of contract.

(vi) A waiver of any provision of this chapter.

(k) Selling insurance of any kind in connection with the making or collecting of a small loan.

Sec. 411. Finance charges made in compliance with this chapter are exempt from IC 24-4.5-3-508 and IC 35-45-7.

Sec. 412. Upon the receipt of a check from a consumer for a small loan, the lender shall immediately stamp the back of the

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1 check with an endorsement that states:

2 "This check is being negotiated as part of a small loan under
3 IC 24-4.5, and any holder of this check takes it subject to the
4 claims and defenses of the maker."

5 Sec. 413. (1) A person engaged in making small loans under this
6 chapter shall post a bond to the department in the amount of fifty
7 thousand dollars (\$50,000) for each location where small loans will
8 be made, up to a maximum bond amount of five hundred thousand
9 dollars (\$500,000).

10 (2) A bond posted under subsection (1) must continue in effect
11 for five (5) years after the lender ceases operation in Indiana. The
12 bond must be available to pay damages and penalties to a
13 consumer harmed by a violation of this chapter.

14 Sec. 414. The department may adopt rules under IC 4-22-2 to
15 implement this chapter.

16 SECTION 2. An emergency is declared for this act.

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